

TCEQ Air Permit No. 2345

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APPLICATION BY	§	BEFORE THE
	§	
	§	
H&B CONTRACTORS LTD	§	TEXAS COMMISSION ON
	§	
	§	
WACO, MCCLENNAN COUNTY	§	ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

### **APPLICANT'S RESPONSE TO HEARING REQUEST**

Pursuant to 30TAC 55.209(e), H&B Contractors LTD, Applicant for the above captioned air quality permit renewal (Applicant) respectfully files this response to the hearing requests filed by Mr. John Angerman (Requestor).

### **INTRODUCTION AND BACKGROUND**

Applicant has since 1973 owned and operated at its current location the plant which is the subject of the pending application. Since 2003, Applicant has installed certain facilities pursuant to permits by rule and obtained a permit amendment authorizing use of diesel fuel. Also in 2003, Applicant installed a new and more efficient emission control device (fabric filter baghouse) in accordance with a standard permit. In November 2004, Applicant timely filed the pending renewal application and published notice and Requestor submitted a letter requesting a hearing. Applicant republished notice following the permit amendment and Requestor submitted a similar request. Because the pending renewal involves no increase or change in allowable emissions, a hearing is not authorized under the Texas Health and Safety Code (THSC) or Commission rules. Furthermore, the requests express only general concerns that are not appropriate issues for a contested case hearing and fail to demonstrate that Requestor is an affected person under Commission rules.

#### **I**

### **THE TEXAS HEALTH AND SAFETY CODE AND THE COMMISSION'S RULES DO NOT ALLOW A CONTESTED CASE HEARING ON AIR QUALITY PERMIT RENEWALS THAT DO NOT INVOLVE AN INCREASE OR CHANGE IN EMISSIONS.**

Section 382.056 (g) of the THSC and 30 TAC 55.201(h)(i)(3)(c), clearly preclude a contested case hearing on an air quality permit renewal which does not authorize an increase in emissions or a change in the character of emissions, absent unresolved or recurring egregious disregard of applicable requirements. Here, Applicant is currently authorized to operate the facility which is subject to this proceeding pursuant to air quality permit 2345. The pending renewal application does not request and the renewal

would not result in an increase in allowable emissions or the emission of an air contaminant not previously emitted. Moreover, the Applicant's compliance history contains no continuing or unresolved violations and reflects no unresponsive conduct. Accordingly, under the THSC and the Commission's rules no right to a contested case hearing is provided.

## II

### **REQUESTOR DOES NOT DEMONSTRATE THAT HE IS AN AFFECTED PERSON.**

No description of the possible impacts on Requestor of emissions from the facility is provided. Requestor's general statement that the plant will cause an environment that will be unhealthy to live in is insufficient to identify a personal justiciable interest which is affected by the application. Rule 55.201(d)(2) requires a "... brief, but specific, statement explaining how or why the Requestor will be affected in a way not common to the general public". Requestor's statements are brief, but patently non-specific and do not distinguish Requestor from the general public.

## III

### **REQUESTOR HAS NOT LISTED RELEVANT AND MATERIAL DISPUTED ISSUES OF FACT AS REQUIRED BY 30TAC 55.201(d)(4)**

Because of the general nature of Requestor's letters and because Requestor has filed nothing in reply to the Executive Director's Response to Comments, it is impossible to determine whether any relevant issues are raised or whether they involve fact or law, and the hearing request is therefore deficient. Requestor does not specifically reference or dispute the quantity or character of emissions from the plant, nor does he dispute the Executive Director's or the Applicant's calculations, modeling, methodology, procedures, analysis or conclusions. In his Response to Comments the Executive Director attempted to identify issues and respond to them, outlining the reasons for his conclusion that all applicable requirements have been met. The Response articulated in plain language the basis for the Executive Director's position and Requestor did not reply, leaving the commission to speculate on disputed facts. In any event, Applicant disputes that its facility has or will adversely affect public health or any individual's health or the environment. Applicant also contends that assertions regarding noise and unspecified future real estate development are not relevant as a matter of law.

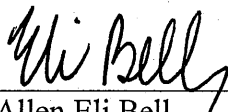
## IV

Applicant estimates that the contested case process will take six months to one year.

## V


In view of the foregoing, Applicant respectfully requests that the Commission deny the hearing request and approve the renewal of permit No. 2345 as recommended by the Executive Director.

Respectfully submitted,  
**HILGERS, BELL & RICHARDS LLP**

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served by fax or U.S. mail as indicated on the attached Mailing List, on this the 01 day of October, 2007:

  
Allen Eli Bell

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